UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 2, 2024

By email only to superintendent@wjccschools.org

Superintendent Olwen E. Herron, Ed.D.
Williamsburg-James City County Public Schools
P.O. Box 8783
Williamsburg, VA 23187-8783

Re: Case No. 11-24-1375
Williamsburg-James City County Public Schools

Dear Dr. Herron:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against Williamsburg-James City County Public Schools (the Division). The Complainant filed the complaint on behalf of a student at [redacted content]. The Complainant alleged that the Division discriminated against the Student on the basis of disability when it failed to respond to a request to evaluate the Student in a timely manner and consistent with Section 504 procedural requirements since [redacted content].

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance. The Division receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation to date, OCR reviewed information provided by the Complainant and the Division. Before OCR completed its investigation, the Division expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Facts

The Student was in [redacted content] at the School during the [redacted content] school year. During that year he had [redacted content], and [redacted content] since starting in the Division in the [redacted

content] school year. Due to these [redacted content] issues, the Complainant told OCR that in [redacted content] she asked [redacted content] verbally for a "child study" for the Student, but nobody ever responded to her request. On [redacted content], the Complainant sent an email to [redacted content] requesting that the Student be referred for a Child Study due to [redacted content] in school and giving her written permission for him to be evaluated.[1]

The Student was formally referred to the School's Child Study committee on [redacted content]. A Notice of Invitation to Child Study was sent to the Complainant that day inviting her to a meeting the following week. The invitation stated that during that meeting, the Committee, in collaboration with the parent, would review the Student's educational and other data to identify and make recommendations as part of a Child Study Action Plan to meet the Student's needs, and that this Plan may include "interventions, strategies, and/or an evaluation to address the identified concerns."

The Committee gathered input from the Student's teachers, a student reflection, and a parent questionnaire. At the meeting on [redacted content], the Committee discussed a pattern of the Student's [redacted content], including teacher input highlighting significant problems [redacted content] and being extremely below grade level in [redacted content]. The Committee decided to develop a Student Advancement Plan for the Student and to reconvene in [redacted content]. The Complainant told OCR that at this meeting the Committee discussed initiating the Advancement Plan in order to gather more academic data on the Student, and that she was told that if the Student did not complete his academic work, then the School would not move forward with the Child Study. The Complainant also said that the School did not provide her with signed paperwork from the meeting until [redacted content].

According to the Complainant, on [redacted content], the Complainant informed the School that the Student had been diagnosed with [redacted content]. On [redacted content], the Complainant emailed the Division Superintendent and school board regarding her complaints about the Child Study process and the Student's [redacted content]. In this email, she wrote that she met with the Child Study Team again in [redacted content], but that they did not finish the meeting due to a fire alarm, and nobody contacted her to reschedule it. She also wrote that she met with [redacted content], because they had forgotten to tell the other team members about the date. According to the Complainant, during that meeting, the [redacted content] said that the Student had not complied with the terms of the Advancement Plan, that he was not a candidate for a 504 Plan, and that 504 Plans were [redacted content].

On [redacted content], at a meeting with the Complainant, the Child Study Team recommended that the Student be evaluated for special education services and the Complainant consented. An eligibility meeting was scheduled for [redacted content], but then rescheduled when the Team was notified that the Student had [redacted content]. According to the Division, after the Student [redacted content], [redacted content] notified the Complainant. The Special Education Coordinator also spoke with the Complainant and shared that the Team could meet on [redacted content] as scheduled, but that [redacted content] triggered the requirement for [redacted content] assessment. The Complainant moved forward with the [redacted content] assessment, which the Division agreed to pay for.

On [redacted content], the Team met and found the Student eligible for special education services under the category of [redacted content]. The Team discussed but declined to find him eligible under the

[1] The Division's [redacted content] handbook describes Child Study as a team of staff exploring resources for students with academic, behavioral, or adjustment problems, such as interventions or accommodations.

category of [redacted content]. The Complainant consented to the determination, and the team met again on [redacted content] to develop the Student's Individualized Education Program (IEP).

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The regulation implementing Section 504 does not impose a specific timeframe for completing an evaluation and determining placement. However, an unreasonable delay may result in discrimination against a student with a disability because it may have the effect of denying the student meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) and state timelines, which OCR does not enforce, are nevertheless helpful guidance in determining what is reasonable. The IDEA regulation requires that school district complete evaluations within 60 days of receiving parental consent for the evaluation or within a timeline established by the state (34 C.F.R. § 300.301(c)(1)). Virginia state regulations generally require that all evaluations and decisions about eligibility be completed within 65 business days of the receipt of the referral by the special education administrator or designee (8VAC20-81-60(b)(1)(g)).

Analysis

Based on the information gathered to date, OCR is concerned that the Division failed to timely evaluate the Student after the Complainant requested an evaluation in writing on [redacted content] (and according to the Complainant, verbally in [redacted content]). OCR found evidence to indicate that as part of this initial request, the Complainant raised concerns about the Student's [redacted content] which, when coupled with her more general concerns about grades and behavior, may have triggered the need for an evaluation for a suspected disability. However, the Division did not refer the Student for an initial evaluation until [redacted content], and did not have an eligibility meeting until [redacted content], over five months after the Complainant's request.

On August 1, 2024, the Division agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the Division's implementation of the agreement until the Division is in compliance with the terms of the agreement and the statutes and regulations at issue.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those

addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the Division with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact Sharon Goott Nissim, the OCR attorney assigned to this complaint, at 202-245-7261 or sharon.nissim@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team 1
Division of Columbia Office
Office for Civil Rights

CC: *Pamela O'Berry, counsel, at poberry@sandsanderson.com*